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| In the Matter of |) | |
| |) | File Number: EB-07-BS-164 |
| John Doe |) | |
| |) | NAL/Acct. No: 200832260001 |
| Jamaica Plain, MA |) | |
| |) | FRN: 0007823198 |
| |) | |

Released: November 4, 2008

⁴ The police report submitted to the Boston Office is in the form of a memorandum from Sergeant Detective Robert Kjersgard, #11621, to Captain Christine Michalosky, Area E-13 Commander, dated October 29, 2007 (CC # 070598288). The police report also indicated that another individual interviewed by police officers admitted to being with Doe on October 24, 2007, and observed Doe communicating on a hand-held radio with a Boston Police dispatcher.

to police on October 24, 2007, that he had discovered that his transmissions were disrupting police radio communications three days prior, *i.e.*, beginning on October 21, 2007. At the time of the arrest, police confiscated two radios, a Yaesu radio transceiver and a Motorola two-way handheld radio transceiver.

4. On October 25, 2007, an agent with the FCC's Boston Office met with Boston police and examined the radios confiscated from Doe. The agent confirmed that the radios were programmed with Boston Police radio Channel 4, as well as Channel 1.⁵ The agent also determined that the Yaesu transceiver was capable of emitting a tone that measures approximately 1740 Hz. This type of tone is not typically found on public safety radios and can be easily identified when monitoring radio transmissions.

5. On November 20, 2007, the Boston Police Department submitted a log showing the dates and times the police radio system received interference from a radio transceiver that was emitting a tone similar to the tone that Doe's Yaesu transmitter emits. Specifically, the log shows that, during the three day period during which Doe admits to knowingly operating on police Channel 4, *i.e.*, October 21, 2007 to October 24, 2007, there were seven instances in which normal police transmissions were interrupted by a tone similar to the tone the Yaesu transmitter emits.

6. On November 27, 2007, the Boston Field Office issued a Notice of Apparent Liability for Forfeiture ("*NAL*") to Doe in the amount of \$10,000 for operating radio transmitting equipment on land mobile channels reserved exclusively for use by public safety entities.⁶ In his response to the *NAL*, Doe does not dispute the findings, but requests a cancellation of the forfeiture based on his inability to pay.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁷ Section 1.80 of the Rules,⁸ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*").⁹ In examining Doe's response to the *NAL* and his statement of income,¹⁰ Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹¹

8. After examining the financial documentation submitted by Doe, we conclude that cancellation of the forfeiture is warranted, based solely on his lack of income. Because of the seriousness of the violation, however, we admonish Doe for his willful and repeated violation of Section 301 of the Act.

⁵ The agent also observed that the radios were programmed with many other channels that are not authorized for private use, *e.g.*, police detective channels, fire department channels, and housing authority channels.

⁶ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832260001 (Enf. Bur., Boston Office, rel. November 27, 2007).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁰ Because Doe has not filed federal income tax returns, Bureau staff requested that Doe submit a signed statement of income.

¹¹ 47 U.S.C. § 503(b)(2)(E).

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, that the Notice of Apparent Liability for Forfeiture issued to John Doe for violation of Section 301 of the Act **IS HEREBY CANCELLED**.¹²

10. **IT IS FURTHER ORDERED** that John Doe **IS ADMONISHED** for his violation of Section 301 of the Act.

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to John Doe at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director, Northeast Region
Enforcement Bureau

¹² 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4); 47 U.S.C. § 301.